No. 80-5303
IN THE

Supreme Court of the United States

October Term, 1980

ANTONIA BELTRAN, individually and on behalf of all others similarly situated,

Petitioner,

vs.

BEVERLEE A. MYERS, individually and as Director, California State Department of Health; and ELISABETH LYMAN, individually and as Deputy Director, California State Department of Health,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS.

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vs.

BEVERLEE A. MYERS, individually and as Director, California State Department of Health; and ELISABETH LYMAN, individually and as Deputy Director, California State Department of Health,[1]

Respondents.

BRIEF FOR RESPONDENTS.

Statement of the Case.

1. In 1965, Medicaid was established under Title XIX of the Social Security Act. (42 U.S.C. sec. 1396 et seq.) Its purpose was to enable each state ". . . as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose

[1]Beverlee A. Myers is the Director of the Department of Health Services, which is erroneously identified in the caption as its predecessor, the Department of Health; Elisabeth Lyman is the Deputy Director of the Department of Health Services, which is also erroneously identified as the Department of Health.

income and resources are insufficient to meet the costs of necessary medical services. . . ." (42 U.S.C. sec. 1396.) This cooperative federal-state program is designed to provide medical assistance only to those individuals who truly are in need of such assistance. A state that elects to participate in the program is required to adopt a state plan for assistance which conforms to federal law. (42 U.S.C. sec. 1396a(b).) Once a state plan is approved by the Secretary of the Department of Health and Human Services (HHS),[2] the state is eligible to receive federal financial assistance for its program. (42 U.S.C. sec. 1396.)

One requirement of federal law binding upon a state which operates a Medicaid program is that it must provide coverage to a group of persons known as the "categorically needy"—primarily those individuals who receive financial assistance under Title IV-A of the Social Security Act (Aid to Families with Dependent Children, referred to as "AFDC") or Title XVI of the Social Security Act (Supplemental Security Income for the Aged, Blind, and Disabled, referred to as "SSI"). (42 U.S.C. sec. 1396a(a)(10)(A); 42 C.F.R. sec. 435.4.) States also have the option of covering a group of individuals known as the "medically needy"—primarily those individuals who would qualify for Title IV-A or Title XVI financial assistance except that they have sufficient income and resources to cover their needs, apart from medical expenses. (42 U.S.C. sec. 1396a(a)(10)(C); 42 C.F.R. sec. 435.4.)

2. California has chosen to participate in the Medicaid program. (J.A. 58.) California's state plan for medical as-

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[2]While many of the policies discussed in this brief were developed by HHS' predecessor, the Department of Health, Education and Welfare (20 U.S.C. sec. 3508), references herein will be limited to the designation "HHS."

sistance (referred to as the "Medi-Cal program") was approved by the Secretary and the state is presently receiving federal funds. (J.A. 66.) California has enacted a comprehensive body of statutes and promulgated regulations to administer its Medi-Cal program. (Welf. & Inst. Code sec. 14000 et seq.; 22 Cal. Admin. Code sec. 50000 et seq.) As part of that program, California has elected to cover the optional medically needy. (Welf. & Inst. Code secs. 14005.7, 14051; J.A. 58.)

In 1965, California adopted Welfare and Institutions Code section 14015. This statute and the regulations promulgated thereunder (22 Cal. Admin. Code secs. 50408, 50409) comprise what is called the "transfer of assets rule." The transfer rule creates a rebuttable presumption that any transfer of assets for less than adequate consideration within two years prior to applying for assistance was made with the intent to qualify for medical assistance. The applicant has the opportunity to rebut the presumption by providing evidence ". . . that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources." (22 Cal. Admin. Code sec. 50409.) Failure to rebut the presumption will result in ineligibility for medical assistance for a specified period of time. (22 Cal. Admin. Code sec. 50411.) Because the Social Security Administration does not utilize a transfer of assets rule in determining eligibility for Title XVI cash assistance (Social Security Administration Claims Manual, sec. 12507(a)), the transfer rule is not applied to the SSI categorically needy.[3]

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[3]California could apply its transfer of assets rule to the SSI categorically needy if it exercised the option, provided by 42 U.S.C. sec. 1396a(f), of utilizing criteria that were in effect on January 1, 1972. California, however, has not adopted this "section 209(b) option."

The transfer rule is applied to the medically needy (J.A. 59) as well as other groups.

California also has promulgated other regulations which set forth financial eligibility rules for medical assistance. California's eligibility regulations permit an individual person who has resources of not more than $1,500 to be eligible for medical assistance benefits under the program for the medically needy (Welf. & Inst. Code sec. 14006; 22 Cal. Admin. Code sec. 50420). Generally excluded from the computation of resources are the individual's home, some income-producing real property and certain other assets. (Welf. & Inst. Code sec. 14006; 22 Cal. Admin. Code secs. 50418, 50425-50489.)[4]

Under the Medicaid program, a state is required to "provide for flexibility in the application of such [eligibility] standards with respect to income by taking into account . . . the costs . . . incurred for medical care or for any other type of remedial care recognized under State law. . . ." (42 U.S.C. sec. 1396a(a)(17).) This procedure, commonly called "spend-down," is implemented in California's Medi-Cal program and referred to as the "share of cost" requirement (22 Cal. Admin. Code sec. 50651 et seq.).

The "share of cost" provisions permit an individual who otherwise meets the resource requirements of the Medi-Cal program to become eligible for Medi-Cal by devoting excess income to the costs of his or her medical care. An individual's "share of cost" is calculated by subtracting the applicable "maintenance need" (as determined by 22 Cal.

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[4]Federal law permits states, under limited circumstances, to recover the cost of medical assistance from the assets (exempt and nonexempt) which are left in the individual's estate after death (42 U.S.C. sec. 1396a(a)(18)). California has not implemented such a recovery procedure. (Cf. *Dawson v. Myers* (9th Cir. 1980) 622 F.2d 1304, 1308; J.A. 60.)

Admin. Code sec. 50601 et seq.) from the net nonexempt income available for a particular month; the remainder is the "share of cost" for that month. (22 Cal. Admin. Code sec. 50653.) The individual becomes eligible for Medi-Cal for that month as soon as health care costs have been obligated or paid in an amount equal to the share of cost. (22 Cal. Admin. Code secs. 50655.)

3. Rossye Dawson, on behalf of herself and others similarly situated, instituted this action on June 19, 1978, by filing a complaint for declaratory and injunctive relief in the district court for the Central District of California. (J.A. 60.) The gravamen of her complaint was that California's transfer of assets rule was inconsistent with applicable portions of the Social Security Act and thus violated the Supremacy Clause. It was also alleged that the rule violated the equal protection and due process clauses of the Fourteenth Amendment. Plaintiff Dawson has since died. (J.A. 60.) Two other individuals, Antonia Beltran and Enosinsio Manahan, intervened seeking the same relief. (J.A. 2.) Both plaintiffs in intervention had transferred all or part of their interest in their homes to relatives. (J.A. 6, 7.) Both plaintiffs were denied Medi-Cal benefits based on the fact that they had transferred assets for less than adequate consideration prior to applying for Medi-Cal. (J.A. 61.) Neither of the plaintiffs was able to overcome the presumption that they had transferred their assets with the intent to qualify for assistance.[5] (J.A. 61.) The district court certified a class

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[5]In October 1978, the county computed Beltran's period of ineligibility to be 885 months. As a practical matter, Beltran would not be ineligible for 885 months because the ineligibility period would be substantially reduced by deducting the amount of medical expenses actually paid from the excess net value of the property transferred. (22 Cal. Admin. Code secs. 50411, 50605.) Beltran applied and was found eligible for Medi-Cal effective from March 1, 1980 (Pet. brief, p. 8 fn. 7).

consisting of all those aged, blind, and disabled individuals who, as of June 19, 1978, have been or are denied Medi-Cal benefits because of California's transfer of assets rule. (J.A. 45.) Plaintiff Manahan died while the case was before the Court of Appeals. (Pet. Brief, p. 11, fn. 11.) On May 10, 1979, the district court granted California's motion for summary judgment and denied plaintiff's cross-motion for summary judgment. (J.A. 54.) The court found that California's transfer of assets rule did not conflict with the Supremacy Clause, nor did it constitute a denial of equal protection or due process. (J.A. 47.)

4. On May 11, 1979, plaintiffs appealed to the Court of Appeals for the Ninth Circuit. In a unanimous decision dated May 14, 1980, a three-judge panel of the Court of Appeals for the Ninth Circuit affirmed the judgment of the lower court. (*Dawson v. Myers* (9th Cir. 1980) 622 F.2d 1304; J.A. 56.)

5. Plaintiffs filed a petition for rehearing and a suggestion for rehearing en banc. The Secretary of HHS also made a motion for permission to file an amicus curiae brief. On July 30, 1980, a three-judge panel voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. (J.A. 74.) The full court was advised of the suggestion for en banc rehearing and no judge of the court requested a vote on the suggestion. (J.A. 74.) In addition, the motion by the Secretary of HHS for permission to file an amicus curiae brief was denied. (J.A. 74.) The plaintiffs then filed a petition for writ of certiorari. On November 3, 1980, this court granted the petition limited solely to the Supremacy Clause question. (J.A. 75.)

On December 13, 1980, the Boren/Long Amendment No. 1936 to HR 8406 passed both the Senate and House of Representatives. (See 1979-1980 CCH Congressional In-

dex, p. 34,547 (December 19, 1980).) This Amendment permits the use of transfer of assets rules in both the Title XVI SSI/SSP cash assistance program and the Title XIX Medicaid program.[6] On December 28, 1980, that Amendment was signed into law.[7]

Summary of Argument.

A. The Medicaid program (42 U.S.C. sec. 1396 et seq.) is a cooperative federal-state program enacted to provide medical assistance to needy individuals. In order to receive federal financial participation for its Medicaid program, a state must adopt a plan for medical assistance which conforms to federal statutes and regulations. A state is given considerable flexibility, however, in the administration of its medical assistance program, especially when necessary to deal with the serious fiscal problems associated with mounting welfare costs. A corollary of this general proposition is that the federal Supremacy Clause will not be applied to void provisions of these state programs unless there is clear congressional intent to do so.

As part of its Medi-Cal program, California has adopted a transfer of assets rule (Cal. Welf. & Inst. Code sec. 14015; 22 Cal. Admin. Code secs. 50408, 50409). Its purpose is to discourage the intentional divestment of assets in order to establish eligibility for medical assistance. Although in California such a rule cannot be applied to the SSI categorically needy (those aged, blind and disabled individuals

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[6]See fn. 22, *infra*.

[7]See fn. 21, *infra*. By virtue of this Amendment, Congress has substantially remedied the serious fiscal problems alluded to by respondents, *infra*, which would have confronted California and other states. Respondents' brief was substantially completed prior to the enactment of the Boren/Long Amendment. Accordingly, respondents' comments relating to future fiscal impact should be read in light of this Amendment.

who receive SSI cash assistance), there is no prohibition against its application to the optional medically needy group (those aged, blind and disabled individuals who would qualify for SSI cash assistance, except that they have sufficient income and resources to cover their living expenses, aside from medical costs). In the absence of any clear congressional intent to preclude the use of such a rule, and in view of its manifest purpose to preserve the fiscal soundness of the Medi-Cal program in California, the transfer of assets rule may validly be applied to the medically needy.

First, section 1396a(a)(10)(C) of Title 42, United States Code, does not prohibit the application of the transfer of assets rule to the medically needy. That federal statute specifically excludes income and resource criteria from its requirement that the medically needy and categorically needy be treated alike. Since the transfer of assets rule can be properly characterized as a substantive financial eligibility rule which deals with an individual's income and resources, it may be utilized in California's medically needy program.

The transfer of assets rule also does not violate the "comparability" provisions of section 1396a(a)(10)(C). Congressional intent indicates that the requirement of comparability was meant to apply between the various groups of the medically needy—aged, blind and disabled. Its purpose was not to require "comparable" treatment between the categorically needy and medically needy. Even if section 1396a(a)(10)(C) is read to require comparability between the categorically needy and the medically needy, the financial eligibility standards as a whole are similar enough to be considered "comparable."

The informal opinion of the Department of Health and Human Services, as expressed through letters written by regional administrators, that the transfer of assets rule violates section 1396a(a)(10)(C) should be accorded little

weight. HHS has approved California's Medi-Cal plan, and has declined to take any action against that plan. Furthermore, the deference which the courts normally accord an administrative agency's interpretation is not absolute. Where, as in this case, the interpretation is both inconsistent with a statutory mandate, and will frustrate a clearly-expressed congressional policy, the court should not defer to HHS' construction of section 1396a(a)(10)(C).

Second, the transfer of assets rule does not violate section 1396a(a)(17)—the requirement that only "available" income and resources be considered in making eligibility determinations under the Medicaid program. That section was meant to apply to a situation where income and resources were neither presently available, *nor had they ever been available,* to the applicant. It was not intended to apply to a person who divested himself or herself of assets in order to qualify for medical assistance. Furthermore, certain federal regulations explicitly permit states to consider assets and income not presently available in determining eligibility.

Third, section 435.401(c) of Title 42, Code of Federal Regulations, does not prohibit application of the transfer of assets rule to the medically needy. Although that regulation provides that the requirements for determining eligibility for the medically needy cannot be more restrictive than those used for the categorically needy, it clearly was not meant to apply to *financial eligibility* conditions, such as the transfer of assets rule. To interpret that regulation to apply to financial eligibility conditions would result in an inconsistency, since the medically needy are, by definition, subject to different income and resource requirements. Furthermore, the prior wording of section 435.401(c), as well as the context in which section 435.401(c) appears, indicate that

it was meant to refer to the nonfinancial, general eligibility criteria, such as citizenship, alienage or residence.

B. California's transfer of assets rule is also necessary to effectuate the purposes of the Medicaid program. It preserves finite state resources for those who are truly in need of medical assistance. It also prevents the type of fraud and abuse which, if left unchecked, would rapidly deplete the limited funds available for medical assistance. The antifraud provisions of section 1396h(a) of Title 42, United States Code, are of no assistance to states as they do not cover the situation where individuals intentionally divest themelves of assets in order to manufacture eligibility.

The transfer of assets rule is also essential to the proper functioning of the spend-down requirement contained in section 1396a(a)(17) of Title 42, United States Code, and implemented in California as its "share of cost" provisions (22 Cal. Admin. Code sec. 50651 et seq.). The "share of cost" rules require an individual to devote excess income to the cost of medical care. The intentional divestment of assets would render these federally-required provisions ineffective.

C. Recently enacted legislation and accompanying congressional intent are supportive of respondents' position. The Boren/Long Amendment No. 1936 to HR 8406, recently passed by Congress and signed into law on December 28, 1980, is a clear expression of legislative intent that states should be permitted to apply transfer of assets rules for *both the categorically needy and the medically needy*. That legislation was found necessary to correct the frequently utilized practice whereby persons with substantial assets intentionally divest themselves of such assets so that the costs of long-term institutional care will be borne by the state through its medical assistance program. The enactment of the Boren/Long Amendment cannot be interpreted as a

statement of Congress' opinion that, prior thereto, states could not apply transfer of assets rules to the medically needy. Courts have acknowledged that the use of subsequent legislative pronouncements form a hazardous basis for inferring the intent of an earlier Congress. Furthermore, certain reports of the Senate Finance Committee explicitly state that legislation allowing states to apply transfer rules should not be construed as agreement with those decisions which have struck down such rules.

ARGUMENT.

I.

CALIFORNIA'S TRANSFER OF ASSETS RULE DOES NOT VIOLATE THE SUPREMACY CLAUSE AS IT DOES NOT CONFLICT WITH ANY FEDERAL STATUTE OR REGULATION.

Persons who comprise the class which includes the named petitioner have all been found to have transferred their assets for less than adequate consideration *with the intent to qualify for assistance* (Cal. Welf. & Inst. Code sec. 14015). All of them were found to have had sufficient assets that could have been used to support their present medical needs. The purpose in implementing the transfer of assets rule is not so much to penalize these individuals. It is rather to preserve state funds for those persons who are truly in need of government-funded medical care. This Court recognized this aim when it said that restrictions on welfare eligibility attempt ". . . to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments. . . ." (*New York Dept. of Social Services v. Dublino* (1973) 413 U.S. 405, 413.) The Medi-Cal system could not long survive the drain on its funds if individuals in the state who transferred assets for inadequate consideration with the intent to qualify for assistance could receive medical benefits. And, certainly, the "self-reliance" and "civic responsibility" about which this Court spoke would not be promoted by such attempts to qualify for assistance at the expense of the public treasury.

These policy considerations would carry little weight in the face of explicit federal statutes or regulations prohibiting the state's imposition of a transfer of assets rule. However, no such statutes or regulations exist. Nowhere in either Title

XIX of the Social Security Act or the regulations promulgated thereunder is there any mention of a prohibition against transfer of assets rules. In fact, the only logical reading of those statutes and regulations is that a state may impose different income and resource eligibility criteria on the optional medically needy group than those imposed on the categorically needy in order to promote the efficient administration of its Medicaid program.

Petitioner argues that California's transfer of assets rule violates the Supremacy Clause in that it conflicts with portions of the Social Security Act and applicable regulations. Specifically, petitioner alleges that the rule conflicts with 42 United States Code sections 1396a(a)(10)(C) and section 435.401 of the Code of Federal Regulations because it imposes an additional requirement on the medically needy which is not imposed on the categorically needy. The Ninth Circuit found no conflict with either of these sections.[8] (*Dawson v. Myers,* 622 F.2d at 1309-1313; J.A. 62-67, 69-70.) Although other cases have reached the contrary conclusion,[9] respondents submit that the court below reached the correct decision based upon the language of those sections and applicable case law.

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[8]The Ninth Circuit also found that the transfer rule did not conflict with 42 U.S.C. sec. 1396a(a)(17)(B). (J.A. 67.) Petitioner has not argued in her brief that the transfer of assets rule violates this section. Because petitioner did raise this argument in her petition for writ of certiorari, respondents will address it in their argument, *infra.*

[9]*Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869, *Scarpuzza v. Blum* (2d Dept. 1980) 426 N.Y.S.2d 505. Both the lower court in *Caldwell v. Blum* (CCH Medicare and Medicaid Guide, para. 30,093 (N.D.N.Y. 1979)) and the Second Circuit, *Caldwell v. Blum* (2d Cir. 1980) 621 F.2d 491, *pet. for cert. pending* No. 79-2034 (filed June 24, 1980), as well as *Robinson v. Pratt* (CCH Medicare and Medicaid Guide, para. 30,605 (D. Mass. 1980)) also found the transfer of assets rule violative of the Supremacy Clause in those states which did not elect the option available in 42 U.S.C. sec. 1396a(f). These latter three decisions were not final rulings on the merits, but were in the context of motions for a preliminary injunction.

Medicaid has been described as an experiment in cooperative federalism with boundless options. (*Michael Reese Physicians and Surgeons, S.C. v. Quern* (7th Cir. 1979) 606 F.2d 732, 735.) States have considerable flexibility in the administration of their individual programs. (*Norman v. St.Clair* (5th Cir. 1980) 610 F.2d 1228, 1230.) This Court has recognized that states face the "critical problem of mounting welfare costs and the increasing financial dependency of many of its citizens." (*New York Dept. of Social Services v. Dublino*, 405 U.S. at 413.) The severity of these problems requires that states be given "considerable latitude in attempting their resolution." (*Ibid.*)

The starting point in any analysis involving the Supremacy Clause is the basic principle that the courts will not assume that a federal statute was intended to supersede the exercise of a valid state power unless clearly and unambiguously stated. In *Dublino, supra*, this Court held:

> "This Court has repeatedly refused to void statutory programs, absent congressional intent to pre-empt them.
>
> " 'If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.' *Schwartz v. Texas*, 344 U.S. 199, 202-203 (1952)." (*Dublino*, 405 U.S. at 413.)

This principle becomes even more applicable under the Medicaid program, as Congress has expressly required state Medicaid programs to adopt certain procedures to curb abuses and has not prevented state welfare departments from instituting other reforms that would fall within their discre-

tion in administering these programs. (*Michael Reese Physicians and Surgeons, S.C. v. Quern*, 606 F.2d at 735.)

Neither the statutes nor the regulation upon which petitioner relies specifically prohibit California's imposition of a transfer of assets rule. Petitioner can point to no provision in the Social Security Act which mandates that a state may use only eligibility requirements explicitly authorized by federal statute. Petitioner can likewise cite no requirement that the eligibility rules for the optional medically needy group must be identical to those applied to the categorically needy.

A. The Transfer of Assets Rule Does Not Conflict With 42 United States Code Section 1396a(a)(10)(C).

Petitioner's primary argument is that California's transfer rule conflicts with 42 United States Code section 1396a(a)(10)(C). Section 1396a(a)(10)(C) provides that, if a state chooses to make medical assistance available to other groups besides the categorically needy (those receiving aid or assistance under certain state welfare plans or supplemental security income benefits under Title XVI) it must provide:

> "(i) for making medical assistance available to all individuals who would, *except for income and resources*, be eligible for aid or assistance under any such State plan or to have paid with respect to them supplemental security income benefits under subchapter XVI of this chapter, and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services. . . ." (Emphasis added.)

The plain meaning of this statute is that a state must make medical assistance available to the medically needy to the same extent as the categorically needy, *except for income*

and resource requirements. The Ninth Circuit held that the transfer of assets rule is a substantive eligibility requirement that directly applies to the state's income and resource eligibility criteria.[10] (*Dawson v. Myers*, 622 F.2d at 1310; J.A. 63-64.) Petitioner misconstrues the law when she argues that federal law requires that no more restrictive eligibility conditions be employed against the medically needy than against the categorically needy. Section 1396(a)(10)(C) excludes income and resource criteria from these requirements. If the same financial eligibility conditions were employed for the two groups, there would be no difference between them. The transfer of assets rule is a financial eligibility condition which directly affects the individual's income and resource levels. Section 1396a(a)(10)(C) specifically permits such differentiation between the two groups of covered individuals.

The second part of section 1396a(a)(10)(C) requires that a state plan must make medical assistance available to individuals ". . . who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services. . . ." Congress has given some guidance on which beneficiaries shall have their eligibility determined by "comparable" standards. The legislative history of Title XIX is clear that by "comparable standards" of income and

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[10]The district court below, as did the district court in Maryland and the Supreme Court in Wisconsin, characterized the transfer rule as a collateral or procedural eligibility requirement which was permissible under the Social Security Act. (*Dawson v. Beach*, No. 78-2350 (C.D. Cal. 1979; J.A. 52; *Fabula v. Solomon* (D. Md. 1978) 463 F.Supp. 830, *rev'd. sub nom. Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869; *Lerner v. Division of Family Services* (Wis. 1975) 70 Wis.2d 670, 235 N.W.2d 478.) Whether the transfer of assets rule is interpreted as a substantive financial eligibility rule or a collateral eligibility requirement, respondents submit that the rule does not conflict with the Supremacy Clause.

resources, Congress intended to require comparability as among the different groups of medically needy, rather than comparability between the categorically needy and the medically needy.

> "Under the bill, if a State extends the program to those persons not receiving assistance under titles I, IV, X, XIV, and XVI, the determination of financial eligibility must be on a basis that is *comparable* as among the people who, except for their income and resources, would be recipients of money for maintenance under the other public assistance programs. *Thus, the income and resources limitation for the aged must be comparable to that set for the disabled and blind and must also have a comparability for that set for families with children* who, except for their income and resources, would be eligible for AFDC. The scope, amount, and duration of medical assistance available to each of these groups must be equal." (Emphasis added.) (Sen.Rep. No. 404, 89th Cong., 1st Sess., (1965), reprinted in [1965] *U.S. Code Cong. & Admin. News,* 1943, 2017.)

Congress, therefore, required that, within the medically needy group, the aged, the blind and the disabled must have their eligibility determined by comparable income and resource limitations. It did not require comparability as between the categorically needy and the medically needy.[11]

Even if the second part of section 1396a(a)(10)(C) is read as requiring comparability between the categorically needy and the medically needy, the Ninth Circuit found:

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[11]Although the Second Circuit in *Caldwell v. Blum* (2d Cir. 1980) 621 F.2d 491, rejected New York's argument that the comparability requirement was only meant to apply between the various groups of medically needy, the court conceded that "the State's argument is not without some force. . . ." (*Caldwell, supra,* at 497.)

> "The other standards which are used for determining financial eligibility are similar enough to invite comparison. We therefore cannot say that the standards used by California to determine eligibility into the *medically needy* group (including the transfer rule) are not comparable to those which are used under the SSI program." (*Dawson v. Myers*, 622 F.2d at 1311; J.A. 65.)

For example, Title XVI of the Social Security Act requires that, in determining the resources of an individual, such items as the individual's home, household goods, personal effects, an automobile and other real property essential to the means of self support shall be excluded. (42 U.S.C. sec. 1382b(a).) California has corresponding exclusions in determining eligibility for Medi-Cal: real or personal property used as a home (22 Cal. Admin. Code sec. 50425), household items (22 Cal. Admin. Code sec. 50465), personal effects (22 Cal. Admin. Code sec. 50467), an automobile (22 Cal. Admin. Code sec. 50461), and other real property (22 Cal. Admin. Code sec. 50427). Therefore, as the court below noted, the rules for determining financial eligibility for Medi-Cal are "comparable" to those utilized in the Title XVI SSI program.

Section 1396a(a)(10)(C)(i) specifically permits the states to make medical assistance available to the medically needy, i.e., those "who have insufficient . . . income and resources to meet the costs of necessary medical and remedial care or services . . . ." This provision cannot reasonably be construed to require the state to provide medical assistance to individuals who purposefully divest themselves of their assets so as to qualify for the Medicaid program. On the contrary, the provision would seem to exclude such individuals by imposing on the state the obligation to cover only individuals who lack sufficient income and resources to

meet the cost of medical care, as opposed to individuals who manufacture eligibility by giving their assets to relatives.

Petitioner bases her argument on letters written by regional administrators of HHS stating that state transfer rules are inconsistent with section 1396a(a)(10)(C) because they impose more restrictive requirements on the medically needy than on the categorically needy. An agency's interpretation of the law which it is charged with administering is not, however, entitled to complete deference. In a recent case dealing with HHS' interpretation of certain Medicare regulations, it was held:

> "The deference which a reviewing court is to afford to an agency's interpretation of its regulations is not total, however. Congress has vested in the court a reviewing function over the action of the agency, including its interpretative decisions. 42 U.S.C. section 1395oo(f), 5 U.S.C. sections 701-706. We would be abdicating our judicial responsibility if we were to pass on the propriety of the Secretary's interpretation without subjecting it to some degree of scrutiny. As where courts review an agency's construction of a statute which the agency administers, 'the deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia. . . .' *American Ship Building Co. v. NLRB*, 380 U.S. 300, 318 (1965); *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261 (1968). Even though the Medicare reimbursement area is complex, and to a great degree left to the Secretary to structure, his interpretations are nonetheless subject to our examination. [Footnotes omitted.]" (*Pacific Coast Medical Enterprises v. Harris* (9th Cir. March 28, 1980) .... F.2d .... , slip op. 2516, 2525-2526.)

Similarly, in the absence of judicial review, this court should not defer to HHS' interpretations that state transfer rules are inconsistent with section 1396a(a)(10)(C). Examination of the pertinent statutes and regulations amply demonstrate that HHS' letter interpretation should not be relied upon as a true indicator of congressional intent in establishing the Medicaid program.

Congressional policy underlying a statute as well as other compelling policy considerations are a more reliable measure of statutory interpretation. Courts have recognized this principle.

> "However, the courts do not merely 'stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.' *NLRB v. Brown,* 380 U.S. 278, 291, 85 S.Ct. 980, 988, 13 L.Ed.2d 839 (1965), quoted in *Volkswagenwerk v. FMC,* 390 U.S. 261, 272, 88 S.Ct. 929, 935, 19 L.Ed.2d 1090 (1968). Nor will the courts 'defer to an administrative construction where there are compelling indications that it is wrong.' *Marathon Oil Co. v. Kleppe,* 556 F.2d 982, 986 (10th Cir. 1977.)" (*Baker v. United States* (9th Cir. 1980) 613 F.2d 224, 227.)

In the case at bar, Congress has given the states wide latitude in the administration of their Medicaid programs. Further, in 1972, Congress repealed section 1396b(e) of Title 42, a statute which required a state to make efforts in the direction of broadening the scope of care and services and in the direction of liberalizing the eligibility requirements for medical assistance. (Pub.L. 92-603, Title II, section 230, 86 Stat. 1410.) By repealing this statute, Congress recognized its awareness of the fiscal crises confronting states in the administration of their Medicaid programs. The effect

of upholding the interpretation taken by HHS' regional administrators would be to make Medicaid available to any aged, blind or disabled person, regardless of whether that individual had sufficient income and resources for medical needs. Such a result flies directly in the face of the congressional intent toward alleviating the fiscal burdens of state Medicaid programs.

Furthermore, HHS' opinion of the transfer of asset rule is far from consistent. HHS has approved California's state plan in spite of the fact that the transfer rule (Cal. Welf. & Inst. Code sec. 14015) has been in effect since 1965. Its continuing approval of California's state plan and its failure to take any action against the plan supports respondents' argument that the transfer rule and its administrative application in California complies with the relevant statutes and regulations under the Social Security Act. (45 C.F.R. section 201.3(d).) This continuing endorsement has been considered a very persuasive factor in determining whether statutory and regulatory requirements have been violated. (*Michael Reese Physicians and Surgeons, S.C. v. Quern* (7th Cir. 1979) 606 F.2d 732, 735-736.) Faced with a challenge to an Illinois regulation which allegedly violated a federal Medicaid statute, the Court in *Michael Reese, supra,* upheld the regulation:

> "In passing the Medicare and Medicaid Antifraud and Abuse Amendments, Congress required state programs to adopt certain procedures to curb abuses. Congress did not prevent state welfare departments from instituting other reforms which would fall within their discretion in administering the Medicaid programs. Medicaid is an experiment in cooperative federalism, (citations omitted), which literally abounds with options, (citations omitted). Medicaid is designed to be flexible enough to meet the varying needs of each state

> which elects to participate in the program. *By approving the Illinois Medicaid plan, and by declining thus far to take any action against the modification in the plan, the Department of Health, Education and Welfare has in effect expressed its view that the plan is in compliance with applicable statutory and regulatory requirements.*" (Emphasis added.) (606 F.2d at pp. 735-736.)

Likewise, by approving California's Medi-Cal program and declining to take any action against it, HHS has in effect expressed its view that the California transfer of assets rule is in compliance with federal law and regulations. (45 C.F.R. sec. 201.3(d).)

B. The Transfer of Assets Rule Does Not Violate the Federal Requirement That Only Available Income and Resources Be Considered in Determining Eligibility.

California's transfer of assets rule is not violative of 42 United States Code section 1396a(a)(17)(B). That statute provides that only available income and resources may be considered in eligibility determinations under the Medicaid program. The state's prerogative in determining eligibility for medical assistance is cast in unmistakably broad terms under Title XIX of the Social Security Act:

> "A State plan for medical assistance must . . . (17) include reasonable standards for determining eligibility for and the extent of medical assistance under the plan which are consistent with the objectives of this subchapter. . . ." (42 U.S.C. section 1396a(a)(17)(A).)

In another context, this Court has specifically construed this section to confer "broad discretion" on the states. (*Beal v. Doe* (1977) 432 U.S. 438, 444.)

In *Lerner v. Division of Family Services* (Wis. 1975) 235 N.W.2d 478, 70 Wis.2d 670, the Supreme Court of Wis-

consin held that the Wisconsin transfer of assets rule did not violate Title 42, United States Code section 1396a(a)(17)(B). The Wisconsin statute is very similar to California's. It presumes that a transfer of property for inadequate consideration within two years prior to the date of application for medical assistance is made in order to receive benefits. The ineligibility lasts for a period during which the value of the asset would have supported the applicant.

The Wisconsin Supreme Court discussed the cases which have considered the availability rule and found that they fall into two categories. One group of cases concerned state regulations which considered the resources of certain relatives as available to the applicant. The second group of cases specifically dealt with a prior divestment of assets. The distinction between the two lines of cases is critical. In the first group of cases, the resources attributed to the applicant were neither presently available *nor had they ever been available*.[12] In those cases which dealt with a prior transfer of assets, the courts found that the divestment negated any claims based on the unavailability of resources. The facts giving rise to the present unavailability are, therefore, determinative on the issue of what is an available resource. (*Lerner*, 235 N.W.2d at p. 483.)

The Wisconsin court in *Lerner* held that the inadequacy of consideration received for transfers of property could properly be considered in determining fraudulent intent. The

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[12]In her Petition for Writ of Certiorari, petitioner cites several cases falling within this first group. (Pet. for Writ of Cert., pp. 14-15.) These decisions are not relevant in that they concern the "deeming" of resources that were never actually available to the applicant or recipient. They focus on the legal responsibility of spouses, relatives and others to support the applicant or recipient *where there has been no intentional divestment of assets*.

presumption that a prior divestment of property was made for the purpose of establishing eligibility does not operate to deny benefits to persons without available resources.

> "It merely requires the petitioner to demonstrate that the lack of presently available resources is not the result of a divestment of property for the purpose of qualifying for benefits. Thus, the statutory provision is not in conflict with the federal statute and regulations, but is merely a procedure for determining what assets are, in fact, available to meet present needs or, but for divestment, would have been available. Petitioner is not precluded from making a showing that the specific divestment was not made in contemplation of benefits or without receiving full and adequate consideration. Any interpretation which finds conflict between the federal statute and the state provision would seem to allow for extensive abuse of the medical assistance program, since a failure to require the showing mandated by sec. 49.47(4)(d), Stats., could result in any and every person who meets the income eligibility requirements automatically becoming eligible for benefits by the simple expedient of giving away or signing over control of all measurable assets. *Such a result could not have been contemplated by the legislature when it enacted Title XIX*, nor by HEW when it promulgated regulations thereunder." (Emphasis added.) (*Lerner*, 235 N.W.2d at pp. 483-484.)

In *Rinefierd v. Blum* (4th Dept. 1979) 412 N.Y.S.2d 526, the Appellate Division of the Supreme Court in New York held that New York's transfer of assets rule did not violate the availability provision in Title 42, United States Code section 1396a(a)(17)(B). The New York court acknowledged that a state transfer of assets rule which assumes assets are available to recipients when, in fact, such assets are not available would violate the Supremacy Clause. But

those cases which so held were dealing with statutes which disqualified an applicant *solely because of a transfer*. New York's statute (like California's) denies assistance only where the transfer is made for the purpose of qualifying for medical assistance. (*Rinefierd*, 412 N.Y.S.2d at 529.)

Following the reasoning in *Rinefierd, supra*, the California transfer of assets rule is designed to prevent transfers of funds or property which are "sham or spurious" or made with the intent to qualify for assistance. California's rule, therefore, serves a legitimate interest in assuring that limited state medical assistance funds "be spent on behalf of those genuinely incapacitated and most in need. . . ." (*Rinefierd*, 412 N.Y.S.2d at 529, quoting *Dublino, supra*.)

Finally, there is nothing in the plain language of section 1396a(a)(17)(B) or in the legislative history of that statute which necessarily equates the term "available" with *present* record title or ownership. (*Dawson v. Myers*, 622 F.2d at 1312; J.A. 68.) Congress intended that this sattute correct the situation where, for example, contributions from relatives or support payments from absent fathers, which are not actually received by the needy individual, are included as part of that individual's available income. (Sen.Rep. No. 404, 89th Cong., 1st Sess. (1965), reprinted in [1965] *U.S. Code Cong. & Admin. News*, 1943, 2018.) Further support for this interpretation lies in the federal regulations, which authorize a state to consider an applicant's income and assets six months in the future in determining eligibility. (42 C.F.R. sections 435.831(a), 435.845(b).) "Since a state is authorized to consider future assets it must follow that it should also be allowed to consider those assets which have been recently disposed of under circumstances which indicate that the purpose was to qualify for public medical assistance." (*Dawson v. Myers*, 622 F.2d at 1313; J.A. 68.)

Case law and the plain language of 42 U.S.C. section 1396a(a)(17)(B), therefore, establish that a statute such as California's does not violate the federal requirement that only available resources shall be considered.[13] Without a transfer of assets rule *any* persons could qualify for medical assistance by merely divesting themselves of sufficient assets. This would quickly bankrupt a state's medical assistance program and would result in the denial of all benefits to those truly in need. This could not have been the intent of the federal government when it enacted the Medicaid program.

C. The Transfer of Assets Rule Does Not Conflict With Section 435.401(c) of Title 42 of the Code of Federal Regulations.

The petitioner also contends that the transfer rule conflicts with 42 Code of Federal Regulations section 435.401(c). Basically, this regulation provides that a state cannot use requirements for determining eligibility for the medically needy which are more restrictive than those used for the categorically needy. The Ninth Circuit found that this regulation does not apply to financial eligibility requirements such as the transfer rule. (*Dawson v. Myers*, 622 F.2d at 1313; J.A. 69.)

Different financial requirements apply to the medically needy than apply to the categorically needy. By definition the two groups are distinguishable—the categorically needy

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[13]Neither *Scarpuzza v. Blum* (2d Dept. 1980) 426 N.Y.S.2d 505, the district court in *Caldwell v. Blum* (CCH Medicare and Medicaid Guide, para. 30,093 (N.D.N.Y. 1979)), nor *Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869 discussed the "availability" requirement of 42 U.S.C. sec. 1396a(a)(17). In the Second Circuit decision in *Caldwell v. Blum* (2d Cir. 1980) 621 F.2d 491, 496, the court merely mentioned that plaintiff's position was "buttressed" by 42 U.S.C. sec. 1396a(a)(17), without actually analyzing that statute.

have *less* income and resources than the medically needy. Therefore, section 435.401(c) cannot be read to apply to financial eligibility conditions such as the transfer rule because such an interpretation necessitates reading an inconsistency into the federal Medicaid statutes and regulations.

There is additional support for the conclusion that section 435.401 does not apply to *financial eligibility* requirements. First, section 435.401 is found under the general heading entitled "*Subpart E—General Eligibility Requirements.*" (Part 435 of Title 42, C.F.R.) Other subparts state specific and detailed guidelines for financial eligibility requirements. Subpart G sets forth the "*General Financial Eligibility Requirements.*" Subpart H sets forth the "*Financial Requirements for the Categorically Needy.*" Subpart I sets forth the "*Financial Requirements for the Medically Needy.*" None of these specific subparts state that a state Medicaid agency cannot impose a transfer of assets rule on the medically needy. Proper statutory interpretation mandates that these specific and detailed guidelines for financial eligibility requirements control over the general rule stated in section 435.401. Second, there is no discussion of financial eligibility conditions in any other sections of Subpart E. Instead, as the Ninth Circuit noted, the sections of Subpart E concern general eligibility requirements such as citizenship, alienage or state residence. (*Dawson v. Myers*, 622 F.2d at 1313; J.A. 70.) Therefore, the language of section 435.401(c) that eligibility requirements for the medically needy cannot be more restrictive than those for the categorically needy can only refer to those eligibility requirements which are not related to income and resources.

Further support for this interpretation is found in the previous wording of section 435.401(c). When it was designated 45 C.F.R. section 248.2(b)(2), it provided:

"... *Except for financial eligibility*, the conditions of eligibility that are imposed on elective groups [*i.e.*, the medically needy].

"(1) ...

"(2) In the case of aged, blind, or disabled individuals, are not more stringent or more numerous than those imposed on such individuals receiving [SSI] benefits under title XVI. ..." (Emphasis added.) (39 Fed. Reg. 9515 (1974).)

In 1977, that section was renumbered as 42 C.F.R. section 448.2(b)(2). (42 Fed. Reg. 52827 (1977).) When it was renumbered in 1978 as section 435.401(c) and reworded in its present form, HHS noted that there were no substantive policy changes. (43 Fed. Reg. 45176 (1978).) As originally worded, it clearly excepted *financial eligibility* from its requirement that the conditions of eligibility for the medically needy be no more stringent or numerous than those for the categorically needy. The states could, therefore, impose *more stringent financial eligibility conditions* on the medically needy. (*Fabula v. Solomon* (D.Md. 1978) 463 F.Supp. 830, 836; *rev'd. sub nom. Fabula v. Buck* (4th Cir. 1979) 598 F.2d 869.) One would have to conclude that, since the rewording and recodification effected "no substantive changes" (43 Fed. Reg. 45176 (1978)), states would have that same ability under section 435.401(c).

The conclusion that section 435.401 does not apply to financial eligibility requirements is also supported by the fact that sections of Subpart E parallel the subsections of 42 United States Code section 1396a(b). The Ninth Circuit noted, after undertaking a thorough reading of the pertinent statute and regulation, that "... it is apparent that Subpart E (including section 435.401) was designed to carry out the statutory mandate of 42 U.S.C. section 1396a(b) which does not involve financial eligibility requirements." (*Dawson v.*

Myers, 622 F.2d at 1313; J.A. 70.) Regulations are to be construed in light of the statutory mandate under which they issue. (*Pacific Coast, supra*, at 2526.) Applying this principle to the instant case, it is apparent that the Ninth Circuit correctly decided that section 435.401(c) does not apply to financial eligibility requirements such as the transfer of assets rule.

II.

CALIFORNIA'S TRANSFER OF ASSETS RULE IS NOT ONLY PERMITTED UNDER TITLE XIX BUT IS NECESSARY TO EFFECTUATE THE PURPOSES OF THE MEDICAID PROGRAM.

A. The Transfer of Assets Rule Protects the Public Treasury, Discourages Intentional Impoverishment and Ensures That Benefits Are Paid to Those Individuals Truly in Need.

In 1965 the Medicaid program was established in order to assist needy people in meeting the costs of health care. (Social Security Act of July 30, 1965, Pub.L. No. 89-97, 79 Stats. 286, 343.) In 1972, Congress enacted amendments to the Act which reflected congressional concerns for state fiscal interests. (Pub.L. 96-603, Title II, Sec. 230, 86 Stats. 1329, 1410.)

The prevention of fraud is obviously consistent with the intent of the Social Security Act. "Certainly, a State has a valid interest in preventing fraud by an applicant for medical care. . . ." (*Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250, 268; *Buckner v. Maher* (D. Conn. 1976) 424 F.Supp. 366, 373, *aff'd* (1977) 434 U.S. 898.) The Court of Appeals in *Rush v. Smith* (2d Cir. 1978) 573 F.2d 110 has addressed itself to arguments similar to these made by petitioner here. The plaintiffs in that case attacked the New York practice of terminating a recipient's assistance

grant if he or she refused to cooperate in the state's investigation of fraud. The lower court in *Rush v. Smith* (S.D. N.Y. 1977) 437 F.Supp. 576 held that the only allowable eligibility requirements which could be imposed upon applicants for assistance were those specifically authorized by Congress. The Court of Appeals reversed stating that ". . . courts may not void state action under the AFDC program 'so long as the state's actions are not in violation of any specific provision of the Constitution or the Social Security Act.' " (*Rush,* 573 F.2d at 115.) The court found no conflict between the termination of a recipient for the failure to aid in fraud investigations and the federal statutes or regulations. It noted that "Congress has simply not thought it necessary to say anything so patent as that persons who have engaged in fraud or refused to comply with reasonable requests to assist in its investigation may be removed from the rolls." (*Ibid.*) "We find nothing in the Social Security Act that forbids a state to terminate benefits to a recipient who engages in conduct . . . which, if done on a considerable scale, would render continued conduct of the AFDC program impossible. . . ." (*Rush,* 573 F.2d at 117.)

Generally, a state is entitled to adopt reasonable regulations in an effort to prevent fraud. (*Lavine v. Milne* (1976) 424 U.S. 577, 584-585; *Buckner v. Maher* (D. Conn. 1976) 424 F.Supp. 366, 373, *aff'd* (1977) 434 U.S. 898.) This Court should not invalidate California's restriction on fraudulent transfers of assets in the absence of clear legislative intent that such requirements may not be imposed. (*Dublino,* 413 U.S. at 413.)

In *Rinefierd v. Blum* (4th Dept. 1979) 412 N.Y.S.2d 526, the court found that New York's transfer of assets rule, which is similar to California's, is designed to prevent a species of fraud or misrepresentation at the taxpayer's expense. The court stated that the rule:

"... plainly is designed to prevent those transfers of funds or property which may be characterized as sham or spurious or made with fraudulent intent in order for an applicant to claim eligibility. Thus, we consider a transfer of property made in order to qualify an applicant for medical assistance to be a species of fraud. Implicit here in the later-filed application for benefits is the misrepresentation as to the applicant's finances contained in the statement that there exists no available resources. Since immediately prior to the time of transfer assets were available, the fact of transfer coupled with an intent later to file for benefits constitutes a species of misrepresentation or fraud undertaken for the applicant's benefit at the expense of the public fisc.

. . .

"There is little doubt that New York State has a legitimate interest in policing this kind of practice. A state statute that denies benefits to applicants who have utilized what fairly may be termed fraudulent measures to qualify for assistance is not unconstitutional." (*Rinefierd*, 412 N.Y.S.2d at 529)

This type of fraud-preventive statute currently before this court has been known to the law at least since the enactment of 13 Eliz. C. 5 in 1570. The Uniform Fraudulent Conveyance Act, for instance, specifically deals with conveyances for inadequate consideration made by a person about to incur debts.[14] Similarly, the Bankruptcy Act provides that any transfer by a debtor made prior to his bankruptcy with actual intent to hinder, delay, or defraud a creditor may be set aside by the trustee. (11 U.S.C. sec. 548(a).) In enacting

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[14]Section 6 of the Uniform Fraudulent Conveyance Act provides:

"Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors."

the restriction on transfers of assets for inadequate consideration, the California Legislature merely engrafted the well-recognized prohibition against fraudulent property transfers known to the law for at least 400 years.

The district court below and the district court in Maryland (*Fabula v. Solomon* (D. Md. 1978) 463 F.Supp. 830) considered and rejected the argument that state restrictions on fraudulent transfers of assets for the purpose of qualifying for Medicaid conflict with 42 United States Code section 1396a(a)(10)(C)(i) and its implementing regulations. In the state courts, the *Rinefierd* court, as well as the Wisconsin Supreme Court in *Lerner v. Division of Family Services* (1975) 235 N.W.2d 478, are in accord. Unlike the Ninth Circuit, these courts generally found that a transfer of assets restriction is not a substantive eligibility condition, but is merely in the nature of a collateral or procedural eligibility requirement which is clearly permissible under the Social Security Act. (*Dawson v. Myers,* 622 F.2d at 1310; J.A. 63.)

In *Lerner v. Division of Family Services,* 235 N.W.2d at 484, it was argued that since the eligibility for the SSI cash assistance program is not affected by a transfer of assets, 42 United States Code section 1396a(a)(10)(C)(i) prohibited the state from imposing such a restriction on the medically needy. The Wisconsin Supreme Court disagreed:

> "We do not consider that a conflict exists between the state and federal statute and regulation since there is no indication of legislative intent in Title XIX that a state should not be allowed to protect its citizens against misuse of public funds by the expedient of inquiring into the nature of conveyances which might have taken place for the purpose of obtaining benefits." (*Lerner, supra,* at 485.)

California's statute reflects the state's vital interest in deterring intentional impoverishment and in reserving the state's limited resources for those who are truly in need. Elderly individuals who enter nursing homes may remain there for an indefinite period or in some instances permanently. In New York, the cost of a single month of nursing care was as much as $2,000. (*Rinefierd v. Blum*, 412 N.Y.S.2d at 528.) It was noted by the Senate Finance Committee that "[t]he aged, blind and disabled account for some 64 percent of all program expenditures. They are most likely to need hospital, skilled nursing, and intermediate care facility services which comprise two-thirds of Medicaid benefit costs." (Sen.Rep. No. 95-1111, 95th Cong. 2d Sess. (1978) 24-25, reprinted in CCH Medicare and Medicaid Guide, para. 29,592.)[15]

The minimal cash benefits dispersed under the SSI program provide small incentive for an individual to transfer substantial assets. Effective July 1980, an individual recipient currently receives only $238 per month (Social Security Administration Claims Manual § 12999).[16] This amount is reduced by the recipient's nonexcludable income. (20 C.F.R. § 416.410.) In contrast, there is a significant incentive for a person requring costly long-term medical care to divest himself or herself of assets in order to qualify for Medicaid assistance which would then pay the bills for that care.

Congress itself, on more than one occasion, has recognized the need for restrictions on the intentional divestment of assets in order to establish Medicaid eligibility:

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[15]In New York, it was estimated that the invalidation of the transfer of assets rule would cause the state to expend an additional $150 million per year in Medicaid benefits. (*Blum v. Caldwell*, ... U.S. .... , 100 S.Ct. 1635, 1638 (1980).)

[16]Effective July 1980, California provided supplemental assistance to an individual receiving SSI benefits in the monthly amount of $182. (Social Security Administration Claims Manual § R12999(2)(h).)

> "Where an individual with significant assets is faced with the prospect of substantial medical expenses—particularly in cases where a prolonged period of institutionalization may be needed—present law may provide a strong incentive for him to give those assets away to a friend or relative so as to qualify for medicaid immediately. To the extent that this happens, the costs of the program are increased since medical expenses which could be met from the individual's assets are instead being paid for by public funds." ((1979) Sen.Rep. No. 471, 96th Cong., 1st Sess. 48-49.)

If the transfer rule is found unconstitutional, it will be invalid for everyone, not merely for the named petitioners.[17] In-

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[17]Petitioner, citing a few examples, some of which occurred outside California and are, therefore, not before this Court, argues that the transfer rules unjustly deprive individuals of coverage. In effect, she is urging the court to strike down the statute as unconstitutional on the basis of its application in a few isolated instances. Petitioner has failed to introduce any admissible evidence that the rule is applied in California in an unconscionable or unfair manner.

Likewise petitioner states, without any supporting authority, that most people do not divest themselves of assets for the purpose of qualifying for Medi-Cal. The Senate Finance Committee, however, in its explanation of an amendment to one of the reconciliation bills (S2885, § 511) specifically opined that the situation in which a transfer of assets for inadequate consideration is made in "good faith" without an intent to qualify for assistance would be "quite rare." (126 Cong. Rec. § 8250 (daily ed. June 26, 1980).)

Further, petitioner characterizes the application of the transfer rule in California as "heavy-handed" because of the nature of the presumption. Respondents would simply point out that this due process issue is not before the Court. In addition, several courts have upheld transfer of assets rules on due process grounds. (See *Lerner v. Division of Family Services* (1975) 70 Wis.2d 670, 235 N.W.2d 478; *Rinefierd v. Blum* (1979) 412 N.Y.S.2d 526; *Dawson v. Myers* (1980) 622 F.2d 1304; J.A. 70-71.) Those courts which have struck down transfer of assets rules on due process grounds (*Owens v. Roberts* (M.D. Fla. 1974) 377 F.Supp. 45; *Buckner v. Maher* (D. Conn. 1976) 424 F.Supp. 366, *aff'd* (1977) 434 U.S. 898; *Udina v. Walsh* (E.D. Mo. 1977 440 F.Supp. 1151) did so either because the rule provided that any transfer (with or without consideration and for whatever purpose) gave rise to the presumption (*Owens, supra*) or because the presumption utilized

dividuals with substantial assets will benefit from the invalidation of the transfer rule. "This situation damages program credibility by allowing relatively well off individuals to become eligible for medicaid. . . . [and] increases program costs, especially for expenditures for institutional care." (Sen.Rep. No. 95-1111, 95th Cong. 2d Sess. (1978), 24.) Under these circumstances, it is neither unreasonable nor unjust to expect an individual with sufficient resources and income to contribute his or her assets toward the cost of medical assistance. Under the rule, benefits are "provided to those individuals who, in fact, have a financial need, and benefits are denied to the individuals who have artificially created a need by disposing of assets for less than fair consideration." (*Dawson v. Myers*, 622 F.2d, at 1315; J.A. 72.) Therefore, the transfer rule is necessary to protect a state's vital interest in protecting its finite public treasury and providing benefits to those who are truly in need.[18]

Finally, petitioner argues that the transfer rule is unnecessary because of 42 United States Code section 1396h(a). Basically, this statute provides that Medicaid coverage may be denied to an individual who ". . . knowingly and will-

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was an *irrebuttable* one. The presumption used in California's transfer of assets rule is easily distinguishable from those invalidated in *Owens*, *Buckner*, or *Udina*.

It is interesting to note also that petitioner herself never bothered to request an administrative hearing for the purpose of producing evidence to overcome the presumption, pursuant to 22 Cal. Admin. Code § 50409 (J.A. 49) and can hardly complain that the transfer rule, as applied to her, was "heavy-handed."

[18]Furthermore, it should be noted that when an individual is in fact discontinued from Medi-Cal because of the transfer of assets rule, such individual may still receive medical assistance. The counties are required to provide care for indigent residents and those incapacitated by age, disease or accident who are not supported by their relatives or friends, by their own means, or by state or private institutions. (Welf. & Inst. Code § 17000.)

fully makes or causes to be made any false statement or representation of a material fact . . .'' in applying for medical assistance benefits. Section 1396h(a), however, is directed primarily to the offense of fraudulent misrepresentation. It does not impose any penalty against the individual who intentionally gives away assets in order to qualify for Medi-Cal so long as the applicant discloses that a transfer of assets occurred. Therefore, if the individual disclosed the transfer, his or her conduct would not be covered by the prohibition contained in section 1396h(a). Clearly that section alone, without the transfer of assets rule, would not protect the fiscal integrity of a state's Medicaid program and reserve the state's limited financial resources for those in need of medical assistance.

B. The Transfer of Assets Rule Is Necessary for the Implementation of the ''Spend-Down'' Requirement Under Title XIX.

Not only is California's restriction on transfers of assets authorized under 42 United States Code section 1396a(a)(10)(C)(i), but the restriction is manifestly necessary to implement other important provisions of Title XIX.

The Medicaid statute, unlike the SSI statute, affirmatively requires the applicant or recipient to devote excess income and resources to the cost of medical care. This requirement is implemented through what is referred to as the ''spend-down'' procedure. The ''spend-down'' procedure is set forth in 42 United States Code section 1396a(a)(17):[19]

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[19]Under the California Medi-Cal program, ''spend-down'' of income referred to under 42 United States Code section 1396a(a)(17) is called ''share of costs'' and is embodied in Title 22 of the California Administrative Code sections 50651 through 50660. See an explanation of this procedure under ''Statement of the Case,'' *supra*.

> "A State plan for medical assistance must . . . (17) . . . include reasonable standards . . . for determining eligibility . . . and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or any other type of remedial care recognized under State law. . . ."

Thus, in order to become eligible for Medicaid, persons with an income above the allowed income ceiling must go through what is called the spend-down process, i.e., they must incur or pay for their own medical expenses in an amount equal to the amount by which their income exceeds the appropriate income standard for Medicaid. Medical expenses up to the amount of the spend-down liability remain the responsibility of the applicant; Medicaid then pays for (covered) medical care beyond that amount. (See 42 C.F.R. sec. 435.831.)

California's restriction on transfers of assets is crucial to the equitable implementation of the aforementioned spend-down procedure. If applicants are permitted to transfer their resources in order to avoid contributing the income produced by those resources to the costs of medical care, the result will be that the spend-down requirement will be rendered meaningless. If a state could not impose restrictions on transfers of assets, a recipient could simply transfer income-producing resources to one's heirs and avoid the spend-down requirement of contributing to the cost of one's own care. It is plain that the state restriction on intentional divestment of assets is indispensable to the fair implementation of the spend-down procedure.

The situation of Rossye Dawson, the original plaintiff in this case, presents a classic example of how a transfer of

income-producing assets for inadequate consideration frustrates the spend-down (share of cost) provisions. Rossye Dawson had been living in a convalescent hospital at the time she quitclaimed her interest in her home to her daughter and son-in-law, who sold the property a few months later and distributed the proceeds to their three children, Rossye Dawson's grandchildren. The net market value of the property at that time was $20,000. (R.Tab 5, Exhibit A.)

The regulations provide that real property formerly used as a home shall be considered "other real property" effective the first of the month following the date the property is no longer used as a home. (22 Cal. Admin. Code sec. 50425(f).) "Other real property" not exempt as a home may still be exempt if certain conditions are met. (22 Cal. Admin. Code sec. 50427.) Primarily, the property must have a net market value of $25,000 or less; any net market value in excess of this amount is included in the property reserve. (22 Cal. Admin. Code sec. 50427.) The owner must also realize a net yearly income from the property equal to at least six percent of its market value. (22 Cal. Admin. Code sec. 50416.) If Rossye Dawson had retained that real property and rented it, the income received by her would have increased that portion of the cost of her medical care for which she was responsible, i.e., her share of cost. At the time of the transfer, her expenses at the convalescent hospital were approximately $973 per month. (R. Tab 5, Exhibit A.) The income received by the rental of that property could have substantially reduced the liability of the Medi-Cal program for her institutional care.

The spend-down procedure provided for under Title XIX is not found in the SSI statute. (See 42 U.S.C. sec. 1381 et seq.) Moreover, as previously noted, there is little incentive for a person owning substantial assets to convey

those assets to relatives simply to gain the modest monthly income provided under SSI. In contrast, there is significant incentive for a person to divest himself or herself of assets in order to have the state pay for an indefinite period of expensive nursing home care.

III.

THE ENACTMENT OF THE BOREN/LONG AMENDMENT REFLECTS CONGRESSIONAL INTENT THAT TRANSFER OF ASSETS RULES ARE ESSENTIAL.

Petitioner has attempted to make a twofold argument based on subsequent congressional bills which would have explicitly authorized states to impose restrictions on the transfer of assets in their Medicaid programs. On the one hand, petitioner contends that the failure of any of these bills to pass Congress is indicative of legislative intent that the categorically needy and medically needed should be treated identically. Implicit in this contention is petitioner's belief that Congress recognizes the unfairness of imposing transfer of assets rules on recipients of public assistance. On the other hand, petitioner argues that the fact that Congress considered enacting such measures is supportive of her position that states, which do not elect the option in 42 U.S.C. sec. 1396a(f),[20] cannot at the present time impose such rules on the medically needy. Based on the recent

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[20]See fn. 3, *supra*.

passage of the Boren/Long Amendment,[21] petitioner's position is untenable.[22]

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[21]The Boren/Long Amendment No. 1936 passed both the Senate and House of Representatives on December 13, 1980, as part of HR 8406. (See 1979-1980 CCH Congressional Index, p. 34,547 (December 19, 1980).) Counsel for respondents were informed in a telephone conversation with a professional staff member of the Senate Committee on Finance that HR 8406 was signed into law by the President on December 28, 1980. Said staff member also informed counsel for respondents that the slip law, which will be designated Public Law 96-611, has yet to be officially published.

[22]The Boren/Long Amendment No. 1936 to HR 8406, as it appears in the *Congressional Record* at 126 *Cong.Rec.* S16505 (daily ed. December 13, 1980), states:

> "Sec. (a) Section 1613 of the Social Security Act is amended by adding at the end thereof the following new subsection:
>
> " 'Disposal of Resources for Less Than Fair Market Value
>
> " '(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.
>
> " '(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.
>
> " '(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.'
>
> " '(b) Section 1902 of the Social Security Act is amended by adding at the end thereof the following new subsection:
>
> " '(j)(1) Notwithstanding any other provisions of this title, an individual who would otherwise be eligible for medical assistance under the State plan approved under this title may be denied such assistance if such individual would not be eligible for such medical assistance but for the fact that he disposed of resources for less than fair market value. If the State plan provides for the denial of such assistance by reason of such disposal of resources, the State plan shall specify a procedure for implementing such denial which, except as provided in paragraph (2), is not more restrictive than the procedure specified in section 1613(c) of this Act.

The Boren/Long Amendment would permit transfer of assets rules in both the Title XVI SSI/SSP cash assistance program and the Title XIX Medicaid program. Accordingly, the categorically needy as well as the medically needy would be subject to those rules. The Amendment explicitly permits states to take into consideration the resources of an individual within the preceding two years if the individual gave away or sold assets for less than valuable consideration for the purpose of establishing eligibility for Medicaid. States could presume that the transfer was made for the purpose of becoming eligible for benefits, unless the applicant could rebut the presumption by furnishing convincing contrary evidence. The bill also establishes periods of time during which the states may deny the applicant's eligibility.

In arguing for the passage of his coauthored Amendment, Senator Russell Long characterized a transfer of assets for

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" '(2) If any case where the uncompensated value of disposed of resources exceeds $12,000, the State plan may provide for a period of ineligibility which exceeds 24 months. If a State plan provides for a period of ineligibility exceeding 24 months, such plan shall provide for the period of ineligibility to bear a reasonable relationship to such uncompensated value.

" '(3) In any case where an individual is ineligible for medical assistance under the State plan solely because of the applicability to such individual of the provisions of section 1613(c), the State plan may provide for the eligibility of such individual for medical assistance under the plan if such individual would be so eligible if the State plan requirements with respect to disposal of resources applicable under paragraphs (1) and (2) of this subsection were applied in lieu of the provisions of section 1613(c).'

"(c) The amendment made by subsection (a) shall be effective with respect to applications for benefits under title XVI of the Social Security Act filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act."

the purpose of establishing eligibility for public assistance as:

> ". . . an abusive practice in which certain individuals transfer substantial assets to their families or to others in order to bring themselves down to the welfare eligibility level which will qualify them for payments under the supplemental security income (SSI) program and for fully paid medical care under the medicaid program." 126 *Cong.Rec.* S16505 (daily ed. December 13, 1980).

Senator Long recognized this "abusive practice" as a "substantial fiscal concern for many States." (*Ibid.*)

In support of the Amendment, Senator Long commented upon the unsuccessful attempt to remedy this "subterfuge" earlier in 1980 as part of the budget reconciliation bill (Senate Bill 2885, sec. 511). (*Ibid.*) Although that earlier legislation had passed the Senate, and had been concurred in by the House, agreement could not be reached in the context of the reconciliation conference. (*Ibid.*)

Further support for congressional recognition of the need to allow states to impose restrictions on the transfer of assets for the purpose of establishing eligibility for public assistance can be found in the legislative history of that reconciliation bill referred to by Senator Long (Senate Bill 2885). In the General Discussion of (the Senate) Finance Committee Amendments to Senate Bill 2885 (126 *Cong.Rec.* S8248 (daily ed. June 26, 1980)) the following comments on the practice of transferring assets to establish SSI eligibility were made:

> "The committee believes that it is inappropriate for the public assistance programs to be burdened with the assumption of the support and medical care of individuals who have ample personal resources. For this reason, the committee amendment would require that

> any resources which an individual has given away or sold for less than fair market value would still be considered as available for his support, during the 2 years following the transfer of the asset. The amount considered to be available for support would be the value of the transferred asset less any compensation received for it. The Committee recognizes that there may be cases in which such a transaction takes place in good faith and unforeseen circumstances subsequently require an individual to apply for assistance. *The committee believes that such a situation would be quite rare;* however, the provision would allow the rebuttal of the presumption that a transfer of assets was made in order to qualify for benefits or assistance. The burden of proof in such cases would be on the individual and would require a clear showing that at the time the transfer took place there could not have been reasonable expectation that SSI or medicaid benefits would be needed.'' (Emphasis added.) (126 *Cong.Rec.* S8250 (daily ed. June 26, 1980))

The Senate Finance Committee's explanation of that portion of the reconciliation bill is clearly indicative of Congress' belief that restrictions on the transfer of assets for the purpose of establishing public assistance eligibility are needed as part of both the SSI program and the Medicaid program.

Petitioner would probably argue that the passage of the Boren/Long Amendment merely supports her position that, prior thereto, states which did not choose the section 1396a(f) option were not permitted to apply transfer of assets rules to the medically needy because of the language of section 1396a(a)(10)(C). This use of subsequent legislative history to interpret that statute is, however, of dubious value. The court below correctly recognized that pronouncements by a subsequent Congress are not entitled to the same weight as those of the Congress which enacted a measure. (*Banco*

Nacional de Cuba v. Farr (2d Cir. 1967) 383 F.2d 166, 175, *cert. den.* (1968) 390 U.S. 956.) In *United States v. Price* (1960) 361 U.S. 304, 313, this court stated that ". . . views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." Courts are not bound by such pronouncements and some courts have stated that subsequently expressed congressional views should not be relied upon. (*Dawson v. Myers,* 622 F.2d at 1312; J.A. 66, citing *Mathews v. Weber* (1976) 423 U.S. 261, 272 fn. 7.) Inasmuch as the transfer rule does not conflict with section 1396a(a)(10)(C) and Congress was apparently relying upon HHS' erroneous administrative interpretation of section 1396a(a)(10)(C) (*Dawson v. Myers,* 622 F.2d at 1312; J.A. 66-67), this court should not accord deference to the subsequent legislative history of the Medicaid program.

Furthermore, in this particular context, the Senate Finance Committee, in its explanation of the S2885 reconciliation provisions, specifically pointed out that its attempt to limit the disposal of assets for the purpose of establishing SSI eligibility should not be interpreted as agreement with the reasoning of the cases cited by petitioner in her brief.

> "The committee has been told that transfers of this type frequently occur, particularly in cases where an aged individual may face substantial medical expenses. For example, in connection with protracted nursing home care, by transferring assets to a relative, the individual qualifies not only for SSI but also for medicaid. Moreover, under certain court decisions, the absence of an SSI provision in this area has been found to lead to similar problems in connection with the medically needy segment of the medicaid program. (*The committee does not intend that its recognition of the existence of these court decisions should be con-*

strued as agreement that they are correct.)'' (Emphasis added.) (126 *Cong.Rec.* S8250 (daily ed. June 26, 1980))

Therefore, the enactment of the Boren/Long Amendment and accompanying legislative intent should not be interpreted as a statement of congressional opinion that states could not, under the law prior to that Amendment, apply transfer of assets rules to the medically needy.

Conclusion.

Based on the foregoing, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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